

**ADDENDUM No. THREE (3)**  
**to the**  
**REQUEST FOR BIDS**  
**for**  
**WATER AND SANITARY SEWER CONTRACT SERVICE**  
**for**  
**THE CITY OF MONTGOMERY**  
**MONTGOMERY COUNTY, TEXAS**  
**September 22, 2014**

Addendum No. Three (3) addresses the following.

**1. Revised Service Contract Documents**

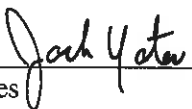
- a. Bidders shall replace the original Service Contract with revised Service Contract.

**2. Request for References**

- a. Bidders shall submit two (2) references from a minimum of five (5) existing clients. Include organization, name, phone number, and email address.

**3. Request for Sample Monthly Operations Report**

- a. Bidders shall submit a sample of the typical monthly operations report which would be submitted to the City Council.

  
\_\_\_\_\_  
Jack Yates  
City of Montgomery, City Administrator

**END OF ADDENDUM No. 3**

This Service Contract (this "contract") is entered into as of this \_\_\_\_ day of October, 2015, by and between City of Montgomery (the "City") a city of the State of Texas organized and operating under the provisions of Chapters 49 and 54, Texas Water Code. and \_\_\_\_\_ a Texas corporation ("CONTRACTOR").

### **RECITALS**

The City owns and operates a water production and distribution system, a sanitary sewer collection system and a treatment facility as described in Exhibit "A" (the "Facilities") and desires to obtain services for the competent operation, maintenance and management of such Facilities. CONTRACTOR is in the business of operating, maintaining and managing water production and distribution systems, sanitary sewer collection systems and treatment facility and desires to enter into this Contract with the City.

### **AGREEMENT**

In consideration of the premises and the mutual undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and CONTRACTOR agree as follows:

#### **I.**

#### **BASIC SERVICES TO BE PERFORMED BY CONTRACTOR**

**Section 1.01. General.** CONTRACTOR shall operate the Facilities to serve the purposes for which they are intended in compliance with all applicable laws and regulations, equipment Manufacturers' recommendations and the provisions of this Contract. CONTRACTOR will perform all of the basic services stated in this Article I. The cost for the basic services to be performed by CONTRACTOR is included in the compensation to be paid by the City in accordance with Paragraph I of Exhibit "C". All services shall be of good quality and be performed in a professional manner. The standard of care for all professional and related services performed or furnished by CONTRACTOR under this Contract will be the care and skill ordinarily used by members of CONTRACTOR's profession practicing under similar conditions at the same time in the same general locality.

**Section 1.02. Staff/Hours of Operation.** CONTRACTOR will make available a staff including no less than one operator holding a Texas Commission on Environmental Quality ("TCEQ") "C" water/wastewater license, and two laborers each Monday through Friday (except holidays as defined in Exhibit "B" between the hours of 7:00 a.m. and 4:00 p.m. CONTRACTOR staff will provide tools and equipment necessary to service the Facilities efficiently.

**Section 1.03. Certified Personnel.** The City's Facilities shall be operated by CONTRACTOR at all times only under the direct supervision of personnel possessing valid licenses and certificates of competency issued by the State of Texas in accordance with the rules and regulations of the TCEQ.

**Section 1.04. Facilities Inspections (Revised).** CONTRACTOR will inspect the City's water plants and wastewater plant a minimum of seven (7) days per week and lift stations a minimum of three (3) days per week or as otherwise directed by the City or required by the TCEQ, and will maintain a log of each inspection and related maintenance activities, in a form approved by the City, as part of the City's permanent records (including such inspections and written logs maintained relative to the City's lift stations). CONTRACTOR shall perform a weekly drive-by inspection (windshield inspection) of the City's other facilities to check for leaks, broken or damaged meter boxes, broken or damaged valves or valve boxes and other potential damage to the City's assets. Annual water plant inspections shall be performed by and submitted to the TCEQ by the City Engineer. Any wastewater plant or lift station inspection(s) authorized by the City Council shall be performed by the City Engineer.

**Section 1.05. Routine Preventive Maintenance (Revised).** CONTRACTOR will perform all routine preventive maintenance on equipment at the City's Water Plants, Wastewater Plant, and Lift Stations in accordance with the equipment manufacturers' recommended schedule and procedures. In the performance of such routine preventive maintenance, CONTRACTOR shall provide appropriate personnel, tools, equipment and supplies as necessary; however, CONTRACTOR shall invoice the City actual costs for expendable items or supplies. CONTRACTOR will maintain permanent records for the City of the maintenance performed on the City's equipment. The City will provide the CONTRACTOR with a Sales and Use Tax Exemption Certification Form for their records and will not be billed for sales tax.

**Section 1.06. 24-Hour Communications.** CONTRACTOR has available a Communications Center twenty-four (24) hours a day, each and every day of the year, including holidays. The telephone number of the Communications Center is the same as our main customer service phone number and will be clearly displayed on each monthly bill sent by CONTRACTOR to the City. It can also be placed on the City's web site, if any, and in any City newsletter. The Communications Center would provide a communications interface between the City's customers, CONTRACTOR management and field personnel. All CONTRACTOR field personnel will have communication with the Communications Center. After-hours response time for an emergency shall not exceed thirty (30) minutes from the time the call is placed to the Communications Center. The Communications Center will maintain, to the extent reasonably possible, the ability to operate during natural disasters.

**Section 1.07. Telemetric Monitoring.** CONTRACTOR will monitor telemetric signal devices installed at or in the Facilities from its Communications Center. Installation of such devices will be at the City's discretion.

**Section 1.08. Board Meetings.** A representative of CONTRACTOR will attend scheduled meetings of the City Council and all special meetings that have an agenda item pertaining to the operations or budgeting of the Facilities and any other meetings which the City Council requires a representative of CONTRACTOR to attend.

**Section 1.09. Monthly Operations Report (Revised).** CONTRACTOR will submit to the City in a format acceptable to the City a monthly operations report that will include at least the following information:

1. Total water produced, purchased and sold. (Billing data to be provided by the City);
2. Total water accounted for;
3. Total water usage as indicated by current customer billings;
4. Summary of maintenance and repair back charges;
5. Insurance claims filed or pending disposition;
6. Summary of maintenance and repair by facility classification;
7. A certification of the date required bacteriological tests were performed;
8. Copies of all reports and correspondence made by CONTRACTOR to or received by CONTRACTOR from local, state or federal regulatory agencies on behalf of the City, including any notices of violation or other non-compliance matters and responses to same; and
9. For water production facilities, copies of all permit reports and correspondence made by CONTRACTOR to or received by CONTRACTOR from the TCEQ, the United States Environmental Protection Agency or any local groundwater conservation entity or surface water entity.

A clear audit record of all CONTRACTOR transactions on behalf of the City will be maintained by CONTRACTOR. Records of such transactions will be available to the City's auditor during normal working hours. CONTRACTOR will cooperate in and provide adequate working space for the conduct of audits.

**Section 1.10. Compliance Reports.** CONTRACTOR will prepare and submit all operational and compliance reports required by the TCEQ, the United States Environmental Protection Agency, and any other local, state or federal agency. CONTRACTOR will coordinate all responses to violation or other non-compliance notices on behalf of the City in consultation with the City's engineer. Copies shall be provided to the City as soon as practicable after submission of the Compliance Reports

**Section 1.11. Operational Budgeting.** CONTRACTOR will coordinate with the City bookkeeper to prepare an annual operations budget for review and approval by the City each year as part of the City's annual budgeting process. CONTRACTOR will work with the City's bookkeeper or City Administrator to review and report the City's budget performance at least quarterly throughout the City's fiscal year. Additionally, CONTRACTOR will, if requested, work with the City in the preparation of, and annual updates of, a five-year operations and capital improvements budget.

**Section 1.12. Correspondence and Inquiries.** CONTRACTOR will respond to all correspondence and/or inquiries from the City's Council, staff, consultants or customers in a prompt and professional manner. For calls requiring a response from CONTRACTOR's field representatives, CONTRACTOR shall note the caller's name, time of call, and location of issue and, if requested, shall make this information available to the city.

**Section 1.13. Cooperation with City Representatives.** CONTRACTOR will cooperate fully with all representatives of the City such as engineers, attorneys, accountants and auditors, including providing time and copies of records, as authorized by the City.

## **II.**

### **OTHER OPERATIONAL SERVICES TO BE PERFORMED BY CONTRACTOR**

**Section 2.01. Use of Staff.** CONTRACTOR will provide the other operational services stated in this Article II. All work performed during regular working hours specified in Article I shall be included in CONTRACTOR's fee for basic services in accordance with Paragraph I of Exhibit "C". For other work specified under this Article II the City will pay CONTRACTOR for such services at the rates reflected in Exhibit "D", as applicable, unless otherwise noted in this Article II.

**Section 2.02. Emergency Repairs (Revised).** CONTRACTOR will respond to any emergency (as hereinafter defined) throughout the year, regardless of the day or the time of day, within the time period specified in Section 1.06 above and with personnel qualified in Section 1.03 above. In all cases where, in the opinion of CONTRACTOR, the estimated costs of repair will exceed the dollar amount specified as "Authorized Maintenance Level" in Paragraph II of Exhibit "C", CONTRACTOR will contact the authorized City member or, if unavailable, any other member to notify the City of the particular situation. CONTRACTOR will simultaneously notify the City Engineer. The fact that said notification cannot be made in a timely manner will neither relieve CONTRACTOR of its responsibility to perform the required repair, nor limit the cost of repairs billed in accordance with the pricing covenants of this Contract.

Emergencies are defined as, but are not limited to:

1. A hazardous condition;
2. A loss of water pressure, or serious degradation of water quality at one or more customer locations; or any event related to the water system which would violate regulatory requirements;
3. A blockage or overflow of any type in the sanitary sewer collection system; or any event related to the wastewater treatment plant(s) which would violate regulatory requirements.
4. A condition that, in the opinion of CONTRACTOR, or any authorized City representative, poses an immediate threat to develop into one of the three emergencies listed above.

**Section 2.03. Non-Emergency Repairs.** CONTRACTOR will, during its regular workday; perform repairs that are not emergencies, as defined in Section 2.02 above. CONTRACTOR will schedule such non-emergency repairs on a first-call, first-served basis, unless specifically asked to accelerate its response to a particular item by an authorized City representative. CONTRACTOR must receive approval from the authorized City representative prior to performing non-emergency repairs when, in CONTRACTOR's opinion, the estimated cost of said repair will exceed the dollar amount specified as "Authorized Maintenance Level" in Paragraph III of Exhibit "C" and where appropriate, consult with the City Engineer.

**Section 2.04. Chemical Inventories.** CONTRACTOR will manage and maintain an inventory of chemicals routinely used in the operation of the Facilities. Chemical inventories will be stored at the Facilities in quantities sufficient to assure continuous operation of the Facilities.

**Section 2.05. Water Main Flushes. (Revised)** CONTRACTOR will directionally flush the water distribution system once each year. Additionally, CONTRACTOR will routinely flush dead-end water mains, not looped back to the system, within the City's water distribution system in accordance with state requirements to minimize the potential for taste, odor or turbidity problems associated with low flows in such dead-end water mains. After flushing the water distribution system as required in this section, CONTRACTOR shall report the flushing at a City meeting, including a report as to the observed condition of lines and flushing valves and water quality. In addition, CONTRACTOR will promptly investigate each water quality concern or complaint received from City customers and will take appropriate action to address such complaints including, if appropriate, flushing the related water main(s).

**Section 2.06. Bacteriological Analysis.** CONTRACTOR will submit water samples to an authorized Department of Health laboratory in compliance with TCEQ regulations. All test results will be kept as part of the City's records. The City will reimburse CONTRACTOR for the actual cost of these tests.

**Section 2.07. Other Laboratory Testing.** CONTRACTOR will perform, or have performed, all other sampling and laboratory analysis necessary to maintain a safe water supply. Additionally, CONTRACTOR will perform, or have performed, other tests, including, but not limited to, those requested by the City, the TCEQ, the Environmental Protection Agency, or any other governmental agency with jurisdiction over the City's facilities. The City will reimburse CONTRACTOR for the actual laboratory expenses incurred by CONTRACTOR for laboratory analysis.

**Section 2.08. Materials Purchasing.** With the exception of materials used for installation of new taps and meters, CONTRACTOR will purchase and deliver material required to provide services under this Contract, and will bill the City for such materials at cost plus 12%. Materials shall include, but not be limited to, oils, lubricants, chemicals (except chlorine or other water disinfectant), fuel for generators and other materials that may be required to meet regulatory requirements, perform maintenance or provide a quality water supply. CONTRACTOR shall be responsible for arranging to have sufficient amounts of chlorine or other water disinfectant chemical delivered so that the System may be operated by CONTRACTOR in accordance with this Contract. The City will reimburse CONTRACTOR for the expenses incurred by CONTRACTOR for the purchasing of said water disinfectant chemical at cost plus 12%.

**Section 2.09. Single-Family Meter Installations. (Revised)** CONTRACTOR will install, at City's request, a meter to serve a single-family residence within ten (10) working days after notification by the City that residential tap and inspection fees are paid. Meter installations will meet American Water Works Association standards and applicable City requirements. The City will pay CONTRACTOR for these meter installations in accordance with Exhibit "E".

**Section 2.10. Commercial Meter Installations. (Revised)** Following the City Engineer's approval of the Civil Site Construction Drawings, CONTRACTOR will install all commercial and other non-single family residential meters within ten (10) working days after notification by the City that commercial tap and inspection fees are paid. The City will pay CONTRACTOR for said meter installations in accordance with Exhibit "E".

**Section 2.11. Utility Charges.** Electric and telephone service accounts for the Facilities shall be in the name of the City and charges for such service shall be paid directly by the City.

**Section 2.12. Printing and Postage. (Revised)** CONTRACTOR will charge the City the then current USPS rate for all postage.

**Section 2.13. Inspections.** CONTRACTOR will inspect each connection to the City's Facilities to assure compliance with all applicable TCEQ rules and regulations and City policies, including the City's then current Rate Order and Rules and Regulations Governing Sanitary Sewer Residential Lines and Sanitary Sewer Connections. CONTRACTOR shall also perform the inspections listed in Exhibit "D" at the rates set forth therein and shall also perform such other inspections as the City may request.

**Section 2.14. Meter and Meter Box Replacements.** CONTRACTOR will replace faulty and stuck meters. Meters with over one million gallons usage will be reported to the City and replaced if directed by the City or in accordance with any meter replacement policy adopted by the City. In addition, CONTRACTOR will replace damaged meter boxes as directed by the City. CONTRACTOR will charge the City for services related to meter and meter box replacements in accordance with Exhibit "D".

**Section 2.15. Grounds Keeping and Mowing (Revised).** The City **WILL** be responsible for grounds keeping and Mowing of City Facilities. The CONTRACTOR **WILL NOT** be responsible for grounds keeping and mowing of City Facilities unless specifically contracted by the City to do so.

**Section 2.16. Contractor Work on System (Revised).** A CONTRACTOR representative shall provide on-site assistance and consultation when any component of the Facilities, such as a motor or pump, is being removed from or returned to the System by a third party contractor. A CONTRACTOR representative shall provide on-site assistance and consultation when any new equipment or component is being added to the Facilities by a third party contractor. Any pump or motor removed for repair shall be inspected by the City Engineer prior to service or repair.

**Section 2.17. Equipment Appearance.** To maintain a neat appearance of the Facilities, CONTRACTOR shall provide painting touch-up services for pumps and piping. CONTRACTOR shall not, however, be required to repaint major pieces of equipment in the Facilities. The City shall reimburse CONTRACTOR for the actual cost of paint provided by CONTRACTOR to perform touch-up services.

**Section 2.18. Fire Hydrants (Revised).** CONTRACTOR will perform ongoing visual inspection and flow-testing of fire hydrants within the City (25% of system to be inspected each quarter), and will submit a written status report of inspections to the City, the City Engineer, and if required, any fire department serving the City on a quarterly basis. Any repairs necessary, including replacement or installation of blue dot reflectors on the roadway adjacent to each hydrant (considered incidental), shall be described in the status report and will be considered non-emergency repairs as defined by Section 2.03 unless a fire hydrant is non-operational. If a fire hydrant is found to be non-operational, CONTRACTOR will place a black covering over the non-operational fire hydrant until such a time as the necessary repairs are completed. CONTRACTOR will obtain City approval to make necessary repairs so that the fire hydrant can be operated.

**Section 2.19. Valves (Revised).** CONTRACTOR will perform ongoing water distribution valve inspections (25% of system to be inspected each quarter) and submit a written status report of inspections to the City and the City Engineer on a quarterly basis. Any repairs necessary will be considered non-emergency repairs as defined by Section 2.03. Valve inspections shall include but not be limited to, verification that valve is operational and left-opening, color coding of lid if found to right opening, verification that box and lid are intact and flush with natural grade.

**Section 2.20. Lift Station Inspection and Cleaning.** At least three (3) times per week, CONTRACTOR will inspect each of the City's lift stations, cycle each pump and record the run time. At least once every six (6) months (or more often if necessary), CONTRACTOR will pressure wash; remove and dispose of accumulated solids, debris, and grease from each of the City's lift stations.

**Section 2.21. Sanitary Sewer Manhole Inspection (Revised).** Subject to the City's prior approval of the cost for and frequency of same, CONTRACTOR will perform an ongoing sanitary sewer manhole inspection program (25% of system to be inspected each quarter), and submit quarterly reports to the City and the City Engineer. This program shall include a visual inspection of the top of the sanitary sewer manhole and the surrounding area and a visual inspection of the inside of the sanitary sewer manhole as can be seen from the top without physically entering. Any repairs necessary will be presented to the City for prior approval and be considered non-emergency repairs as defined by Section 2.03.

### III.

#### INSURANCE

CONTRACTOR shall procure and maintain throughout the term of this Contract, at its sole cost and expense, insurance of the types and in the minimum amounts set forth below. CONTRACTOR shall furnish certificates of insurance to the City evidencing compliance with the insurance requirements hereof upon execution of this Contract and annually thereafter to evidence renewal. Certificates shall name CONTRACTOR, name of insurance company, policy number, term of coverage, and limits of coverage. CONTRACTOR shall cause its insurance companies to provide the City with at least thirty (30) days prior written notice of any reduction in the limit of liability by



endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. CONTRACTOR shall obtain such insurance from such companies having a Best's rating of A+NII or better, licensed or approved to transact business in the State of Texas in which the Services shall be performed, and shall obtain such insurance of the following types and minimum limits:

1. Worker's Compensation insurance in accordance with the laws of the State of Texas, and Employer's liability coverage with a limit of not less than \$1,000,000 each employee for Occupational Disease; \$1,000,000 policy limit for Occupational Disease; and Employer's Liability of \$1,000,000 each accident.
2. Commercial General Liability insurance including coverage for Products/Completed Operation, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:
  - \$2,000,000 general aggregate limit
  - 1,000,000 each occurrence,
  - 1,000,000 aggregate Products, combined single limit
  - 1,000,000 aggregate Personal Injury/Advertising Liability
  - 1,000,000 Pollution
3. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
4. Umbrella Excess Liability insurance written as excess of Employer's Liability, with limits not less than \$2,000,000 each occurrence combined single limit.
5. Crime Bond with a limit of liability not less than \$50,000.

The City shall be added as additional insureds to all coverages required above, except those in Paragraph (I). All policies written on behalf of CONTRACTOR shall contain a waiver of subrogation in favor of the City and the City's agents and employees. In the event of a reduction in coverage or lapse or cancellation of any required insurance it is the specific responsibility of CONTRACTOR to notify the City immediately and to immediately reinstate the insurance at the coverages required herein or to purchase replacement insurance that meets the requirements of this Contract. Failure by CONTRACTOR to immediately reinstate or replace said insurance shall be a material breach of this Contract and the City shall have the right to immediately terminate this Contract upon written notice. CONTRACTOR's failure to provide insurance as required hereunder or to supply the required evidence of insurance, or the failure of the City to require evidence or to notify CONTRACTOR of any breach by CONTRACTOR of the requirements of this provision or deficiencies in the insurance obtained, shall not constitute a waiver by the City of any of these insurance requirements, or a waiver of any other terms or conditions of this Contract, including CONTRACTOR's obligations to defend, indemnify and hold harmless the City as required in this Contract.

#### IV.

#### **GUARANTIES, INDEMNITY AND LIMITATIONS**

**Section 4.01. Guaranties.** CONTRACTOR will use generally accepted business practices in procuring materials and equipment. CONTRACTOR will be neither responsible nor liable for any manufacturer's guaranty or guaranties of or in connection with such materials or equipment. CONTRACTOR will use reasonable efforts to obtain the standard guaranties applicable in the particular industry manufacturing such materials or equipment, and will assign same to the City. CONTRACTOR will provide a one-year warranty on workmanship for all materials or equipment installed by CONTRACTOR personnel or CONTRACTOR subcontractors. CONTRACTOR will develop a list of recommended spare parts to be maintained at the Facilities and will deliver inventory and replenish said parts on a regular basis.

**SECTION 4.02. Indemnity.** AS PART OF THE CONSIDERATION FOR THE CONTRACT, CONTRACTOR, FOR ITSELF AND ITS EMPLOYEES, SUCCESSORS AND ASSIGNS, AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, DIRECTORS, REPRESENTATIVES AND AGENTS (THE "CITY INDEMNITEES") FROM EVERY LOSS, DAMAGE, INJURY, COST, EXPENSE, CLAIM, JUDGMENT OR LIABILITY OF EVERY KIND OR CHARACTER, WHETHER IN CONTRACT, TORT OR OTHERWISE, WHICH ARISES DIRECTLY OR INDIRECTLY FROM CONTRACTOR'S WILLFUL, INTENTIONAL, RECKLESS OR NEGLIGENT (WHETHER ACTIVE, PASSIVE OR GROSS) ACTS OR OMISSIONS RELATED TO OR ARISING FROM THIS CONTRACT. THIS INDEMNITY AND HOLD HARMLESS AGREEMENT WILL APPLY WHETHER SUCH ACTS OR OMISSIONS ARE BY CONTRACTOR ITS EMPLOYEES, OR ANY SUBCONTRACTOR OR AGENT OF CONTRACTOR. ADDITIONALLY, CONTRACTOR SHALL INDEMNIFY THE CITY INDEMNITEES FROM ANY AND ALL LIABILITY, LOSS OR DAMAGE THAT ONE OR MORE OF THE CITY INDEMNITEES MAY SUFFER AS A RESULT OF CLAIMS, DEMANDS, COSTS OR JUDGEMENTS AGAINST SUCH CITY INDEMNITEE ARISING OUT OF THE FAILURE OF CONTRACTOR, ITS EMPLOYEES, SUCCESSORS, ASSIGNS, SUBCONTRACTORS OR AGENTS, TO CONFORM TO THE STATUTES, ORDINANCES, OR OTHER REGULATION OR REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY IN CONNECTION WITH THE OPERATION OF THE FACILITIES UNDER THIS CONTRACT, UNLESS FAILURE TO SO CONFORM WAS A DIRECT RESULT OF CONTRACTOR FOLLOWING THE EXPRESS WRITTEN INSTRUCTION OF THE BOARD OF DIRECTORS OF THE CITY. THE PROVISIONS OF THIS SECTION 4.02 SHALL SURVIVE ANY TERMINATION OF THIS CONTRACT.

**Section 4.03. Reasonable Diligence.** CONTRACTOR agrees to use due diligence and good business practices in the operation of the Facilities. CONTRACTOR will be liable for any direct or indirect loss, injury or damages resulting from the diminution or interruption of service within the Facilities that is caused by the willful misconduct or negligence (whether active, passive or gross) of CONTRACTOR, its employees, representatives, agents or subcontractors.

**Section 4.04. Force Majeure.** Neither the City nor CONTRACTOR will be in default if performance of their respective obligations under this Contract is delayed, disrupted or becomes impossible because of any act of God, war, hurricane, earthquake, fire, strike, work stoppages, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the party affected (collectively, "Force Majeure"). Upon occurrence of any

such event, CONTRACTOR will operate the Facilities to the best of its ability under the circumstances, and CONTRACTOR will not be responsible for any damages, fines, penalties or claims resulting therefrom. If any additional expense is incurred by CONTRACTOR in such operation, that expense will be deemed to be an extraordinary expense, all of which will be paid by the City to CONTRACTOR in accordance with Paragraph VI of Exhibit "C". No event of Force Majeure will allow for the delay or disruption of the respective financial obligations of CONTRACTOR or the City except in the event of widespread economic collapse or banking failures within the United States of America.

**Section 4.05. Compliance with Applicable Laws.** CONTRACTOR will operate the Facilities in compliance with all applicable local, state, and federal laws, rules and regulations.

**Section 4.06. Fines and Penalties(Revised).** Provided that (a) this Contract is in force, (b) the Facilities meet the TCEQ design criteria, and (c) the City has not rejected or otherwise failed to approve any of CONTRACTOR's operational recommendations which would have prevented the violation, CONTRACTOR will pay any and all fines or penalties assessed against the City as a result of actions taken by TCEQ or the Environmental Protection Agency and resulting from CONTRACTOR negligence. The City's failure to approve CONTRACTOR's operational recommendations that would have prevented the violation(s) which result in fines or penalties will relieve CONTRACTOR of any responsibility under this Section 4.06 to pay the applicable fines or penalties.

## **V.**

### **PAYMENTS (Revised)**

The City will pay CONTRACTOR for services to be rendered under this Contract in accordance with the fee schedules contained in Exhibit "C", Exhibit "D", Exhibit "E", and as otherwise specifically provided in this Contract. CONTRACTOR shall provide its invoices to the City bookkeeper no later than the 10<sup>th</sup> of each month. To the extent permitted by law, payment of invoices by the City shall be governed solely by the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code. CONTRACTOR hereby waives any other rights or remedies it may have with respect to payment of invoices.

## **VI.**

### **TERM, TERMINATION, AND RECORDS**

**Section 6.01 Term.** This Contract commences on \_\_\_\_\_, 2015, and will remain in effect for one year and thereafter on a year to year renewal, subject to the rights of either party to terminate the Contract at any time in accordance with Section 6.02.

**Section 6.02. Termination.** Either party to this Contract may terminate this Contract, either with or without cause, by delivering thirty (30) days prior written notice to the other party in accordance with and to the address in Section 7.07 below. Upon termination of this Contract, the City shall pay CONTRACTOR within the time period provided above any outstanding payment due and owing to CONTRACTOR for work performed prior to the termination date; provided, however, the City shall have the right to reduce such final payment as a set-off for any direct damages incurred by the City related to CONTRACTOR's willful, intentional or reckless negligent (whether active,

passive or gross) acts or omission in connection with the services performed under this Contract.

**Section 6.03. City Records.** CONTRACTOR will retain records that CONTRACTOR initiates or receives on behalf of the City in compliance with the City's Records Management Policy, the City's adopted Records Retention Schedules and the Texas Local Government Records Act. If this Contract is terminated, CONTRACTOR will deliver to the City or the City's designated agent, all of said records at no cost to the City not later than thirty (30) days following the effective date of termination, with the exception of all records related to billing and other items necessary for the continued operation of the Facilities, which shall be delivered no later than the effective date of termination. CONTRACTOR may make copies, at CONTRACTOR's expense, of those records.

## **VII.**

### **MISCELLANEOUS**

**Section 7.01. Record Drawings.** The City will provide CONTRACTOR with three sets of record drawings of the Facilities. CONTRACTOR will maintain these drawings in a manner that allows their efficient and effective use in solving problems related to the Facilities.

**Section 7.02. Identification.** CONTRACTOR employees will readily identify themselves when CONTRACTOR communicating within the City and with City customers. CONTRACTOR maintenance and CONTRACTOR operating personnel will possess pictured I.D. cards and wear distinctive clothing bearing CONTRACTOR's name. CONTRACTOR vehicles will display CONTRACTOR's name. All other CONTRACTOR employees will possess pictured I.D. cards.

**Section 7.03. Modification.** Modification of this Contract may be made only by a written document signed by CONTRACTOR and the City.

**Section 7.04. Assignability.** Neither CONTRACTOR nor the City may assign its interest in this Contract without the prior written consent of the other party.

**Section 7.05. Insurance Claims (Added)** CONTRACTOR shall not submit any claim against the City's boiler, machinery, and rotating equipment insurance policy without prior City Council authorization.

**Section 7.06. Subcontract Repairs (Revised).** With the City's best interest in mind and acting in good faith with the requirements of this Contract, CONTRACTOR may subcontract any repairs and/or services that CONTRACTOR is to perform under this Contract, as CONTRACTOR deems appropriate. However, such subcontracting shall not relieve CONTRACTOR of any of its obligations under this Contract, and subcontractors shall be considered to be employees of CONTRACTOR for the purposes of delineating those responsibilities. CONTRACTOR shall require all subcontractors to carry insurance of the types and in the minimum amounts set forth in Article III of this Contract. CONTRACTOR shall supervise and inspect all subcontracted repairs or services performed under the terms of this Contract. The City may, at its discretion, engage its own contractor for certain repair services. In that event, the City agrees that CONTRACTOR shall not be responsible for the quality or timeliness of those services. CONTRACTOR will invoice the City for managing subcontractors as set forth in Paragraph V of Exhibit "C".

**Section 7.07. Independent Contractor (Revised).** CONTRACTOR, its employees, agents and subcontractors are not the City's employees. CONTRACTOR serves the City solely as an independent contractor.

**Section 7.08. Notice (Revised).** Any notice required under this Contract will be in writing and sent by certified mail with return receipt or by hand delivering with return receipt to the intended party's address of record. Notice will be deemed given as of the date of the return receipt when mailed or delivered to the following addresses:

CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY: City of Montgomery  
c/o City Administrator  
101 Old Plantersville Rd.  
Montgomery, TX 77356

The parties may change the respective address by giving the other party fifteen (15) days written notice to the other party.

**Section 7.08. Place of Performance. (Revised)** The place of performance of this Contract shall be the City of Montgomery, located in Montgomery County, Texas.

**Section 7.09. Venue; Attorney Fees.** Venue shall lie in Montgomery County, Texas. The prevailing party in any such suit shall be awarded reasonable attorney's fees and court costs.

**Section 7.10. Parties in Interest.** This Contract shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any benefits or rights upon any other person or entity, including, without limitation, the customers of the City.

**Section 7.11. Counterparts.** This Contract may be executed in one or more original, electronic or facsimile counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same document.

**Section 7.12. Severability.** The invalidity or unenforceability of any particular provision, or any part thereof, of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid or unenforceable provision were omitted.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

**CONTRACTOR:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BY:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**CITY OF MONTGOMERY:**

**BY:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**ATTEST:**

**BY:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**EXHIBIT "A" (Revised)**

**WATER AND WASTEWATER FACILITIES**

<b>Facility</b>	<b>Approximate Location</b>	<b>Physical Address</b>
Lift Station #1SW	corner of SH 105 and FM 2854	236 FM 2854
Lift Station #2	Town Creek WWTP	323 Liberty St.
Lift Station #3	FM 149, NW of bus barn	13790 Liberty St.
Lift Station #4	Old Plantersville Rd., S. of City Hall	651 Old Plantersville Rd.
Lift Station #5	SH 105, east of Napa	2150 Eva St.
Lift Station #6	SH 105, adjacent to MISD stadium	22628 SH 105
Lift Station #7	Lone Star Pkwy., New Community Center	2510 Lone Star Pkwy.
Lift Station #8	Lone Star Pkwy., east of Plez Morgan	1600 Lone Star Pkwy.
Lift Station #9	Buffalo Crossing, north of creek	1355 Buffalo Springs Dr.
Lift Station #10	Buffalo Crossing, south of creek	1191 Buffalo Springs Dr.
Lift Station #11- Decomm.	Berkley @ Bessie Price Owens	215 Berkley Dr.
Lift Station #12	NE corner of CB Stewart and SH	105300 CB Stewart
Lift Station #13	Montgomery Summit Business Park	22400 FM 1097
Lift Station #14	Clepper, west of school, N side of road	110 Clepper
Lift Station #15	SH 105, Kickin' Ash BBQ	1200 Eva St.
Lift Station #16	FM 1097, east of well #3	22712 Hwy 1097 E.
Lift Station #17	FM 149, N of Berkley	14460 Liberty St.
Water Plant #1- Decomm.	Pond St. @ College	210 Pond St.
Water Plant #2	W of intersection of Houston and Stewart	905 Stewart St.
Water Plant #3	FM 1097, east of FM	149109 Business Park Dr.
Sewer Plant #1	FM 149, S of FM 1097	323 Liberty
Sewer Plant #2	Buffalo Springs, S of SH 105	265 S. Buffalo Springs Dr.

## **EXHIBIT "B"**

### **HOLIDAYS**

CONTRACTOR and the City agree that the following days are will be recognized as holidays during each contract year:

New Year's Day (Actual Date)

Good Friday (Actual Date)

Memorial Day (Monday Observed)

Fourth of July (Actual Date)

Labor Day (Monday Observed)

Thanksgiving (Actual Date)

Friday after Thanksgiving (Actual Date)

Christmas Eve (Actual Date)

Christmas Day (Actual Date)



**EXHIBIT "C" (Revised)**

**COMPENSATION FOR SERVICES**

- I. **BASE OPERATIONS FEE:** For and in consideration of basic services outlined in Article I of a Contract and rendered to and on behalf of the City by CONTRACTOR, the City agrees to pay to CONTRACTOR, each month, the base operations fee set forth below.
- II. **Operation of the City's Facilities:**
- |                                  |       |
|----------------------------------|-------|
| Wastewater Treatment Plant No. 1 | _____ |
| Wastewater Treatment Plant No. 2 | _____ |
| Water Plant No. 2                | _____ |
| Water Plant No. 3                | _____ |
| Lift Stations 1-16 @ _____ EA.   | _____ |
| Subtotal                         | _____ |
- III. **AUTHORIZED MAINTENANCE LEVEL:** Consistent with the principles of effective cost containment, efficient maintenance and maximization of operational procedures, the City authorizes CONTRACTOR to perform non-emergency repairs when, in CONTRACTOR's opinion, the cost to the City of such repairs will not exceed \$2,500.
- IV. **MATERIALS:** Cost of materials billed and/or sold to the City by CONTRACTOR will include an administrative fee of 12% as provided in this Contract. Some materials are billed at cost as provided in this Contract.
- V. **SUBCONTRACT (S):** For all repairs and/or services that CONTRACTOR is qualified and capable to perform, but have been performed by a subcontractor in accordance with Section 7.05 of the Contract, CONTRACTOR shall invoice the City no more than if CONTRACTOR had actually performed the work itself. CONTRACTOR's supervision and inspection fees for subcontracts will be 12% of the dollar amounts of the subcontract as provided in this Contract.
- VI. **ADDITIONAL SERVICES:** CONTRACTOR may render additional services not specified in this Contract. Additional services not anticipated and not specified in this Contract may also be requested of CONTRACTOR by the City. The City and CONTRACTOR will in good faith negotiate the amount to be paid by the City to CONTRACTOR for such additional services.

**EXHIBIT "D" (Revised)**

**SCHEDULE OF RATES**

<b><u>SERVICES RENDERED</u></b>	<b><u>RATE</u></b>
Customer Service Inspection	\$ _____ each
Pre-Construction/Post-Construction Inspection	\$ _____ each
Single-Family Residential (SFR) Sewer Tap Inspection	\$ _____ each
Non-SFR Sewer Tap Inspection	\$ _____ /quote
Grease Trap Inspection	\$ _____ each
Backflow Prevention Device Inspection	\$ _____ each
Fire Hydrant Inspections (Sec. 2.18)	\$ _____ each
Fire Hydrant Recoating (Sec 2.18)	\$ _____ each
Water Valve Inspections (Sec. 2.19)	\$ _____ each
Sanitary Sewer Manhole Inspections (Sec 2.21)	\$ _____ each
SFR Meter Replacement <sup>†</sup>	\$ _____ plus meter
Non-SFR Meter Replacement <sup>†</sup>	Cost plus 12%
SFR Meter Box Replacement <sup>†</sup>	\$ _____ each
Non-SFR Meter Box Replacement <sup>†</sup>	Cost plus 12%

<b><u>PERSONNEL &amp; EQUIPMENT</u></b>	<b><u>Straight Time Per Hour*</u></b>
Operations Supervisor/Compliance Manager	\$ _____
Field Technician	\$ _____
Certified Operator	\$ _____
Equipment Operator/Technician	\$ _____
Laborer	\$ _____
Clerical/Administration	\$ _____
Backhoe & Rig(Including Truck & Trailer)	\$ _____
Mini Excavator & Rig (Including Truck & Trailer)	\$ _____
Boring Machine	\$ _____
Air Compressor & Jackhammer	\$ _____
Crane Truck	\$ _____
2" Pump & Hoses	\$ _____
4" Pump & Hoses	\$ _____
Utility Truck/1 ton	\$ _____
Shoring Equipment	\$ _____
Chain Saw	\$ _____
Ladder(s)	\$ _____
Safety Rigging for Confined Space	\$ _____

<sup>†</sup>The City is currently considering bids for transitioning to an AMR system. If this system is adopted the City may begin supplying all SFR meters, meter boxes, etc.

\*Straight time will be charged for work performed from 7:00 a.m. to 4:00 p.m. Monday through Friday, except on Holidays as defined in Exhibit "B". Overtime will be charged for work performed at any time other than straight time and shall be 1.5 times straight time rate.

**EXHIBIT "E"**  
**RATES FOR TAPPING & NEW METER INSTALLATION**

The following rates for meter taps include all labor, equipment, materials, meter and box.

**Single-Family Residential Meter Taps**

3/4" or 5/8" meter (short: less than 5' deep, first 40')                      \$ \_\_\_\_\_ each

1" Meter    \$ \_\_\_\_\_ each

Taps over 40 feet long or deeper than five (5) feet will be charged at cost listed above plus \$ \_\_\_\_\_ per linear foot over the first 40 feet.

**Other Taps**

Other taps, including sanitary sewer, and water meters shall be on a quoted as needed based on customer requirements and specifications approved by the City's Engineer.